

United States Bankruptcy Court

NOV 08 1990

For the NORTHERN District of IOWA BARBARA A. EVERLY, CLERK

IN RE: DAVID J. RAMAKER and
JEAN A. RAMAKER,

Chapter 7

Debtors.

Case No. R85-01839D

DAVID J. RAMAKER and
JEAN A. RAMAKER,
v.

Plaintiffs

WIEDERHOLT AGRI-SERVICE,
A Wisconsin Corporation,

Defendant

Adversary Proceeding No. X90-0142D

JUDGMENT

☒ This proceeding having come on for trial or hearing before the court, the Honorable William L. Edmonds, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

☐ The issues of this proceeding having been duly considered by the Honorable William L. Edmonds, United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED:

that plaintiffs David J. Ramaker and Jean A. Ramaker shall recover from defendant Wiederholt Agri-Service the sum of \$1,375.00
Defendant shall pay punitive damages to Ramakers in the sum of \$300.00

IT IS FURTHER ORDERED that defendant Wiederholt Agri-Service shall within 14 days of the service of judgment provide the debtors with a termination statement for each filing officer with whom a financing statement was filed as provided in Wis. Stat. 409.404(1)(a).



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BARBARA A. EVERLY

Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

November 8, 1990

Barbara A. Nelson

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

NOV 08 1990

BARBARA A. EVERLY, CLERK

IN RE:

DAVID J. RAMAKER and)	Chapter 7
JEAN A. RAMAKER,)	
)	Bankruptcy No. R85-01839D
Debtors.)	

DAVID J. RAMAKER and)	
JEAN A. RAMAKER,)	
)	Adversary No. X90-0142D
Plaintiffs,)	
)	
vs.)	
)	
WIEDERHOLT AGRI-SERVICE,)	
A Wisconsin Corporation,)	
)	
Defendant.)	

MEMORANDUM OF DECISION AND ORDER
RE: MOTION FOR DEFAULT JUDGMENT

The matter before the court is the determination of damages caused to plaintiffs, David and Jean Ramaker, by defendant Wiederholt Agri-Service (WIEDERHOLT). David J. Ramaker (RAMAKER) and Jean A. Ramaker filed their adversary complaint on July 27, 1990. Summons was issued by the clerk on July 27, 1990. Plaintiffs served the summons and complaint on July 31, 1990 by first-class United States mail to the following location: 994 Logan Road, Hazel Green, Wisconsin 53811. Wiederholt failed to answer. Plaintiffs moved for entry of default. Plaintiffs served their motion on Wiederholt on September 10. The court ordered the clerk to enter default against Wiederholt pursuant to Bankr. R. 7055(a). The court ordered also that hearing be held to assess damages pursuant to Bankr. R. 7055 which incorporates

Fed.R.Civ.P. 55(b)(2). The court's order regarding the entry of default was served upon Wiederholt by the clerk. The clerk entered default on September 19. The hearing on damages was held in Cedar Rapids, Iowa on October 24. The court, having heard the evidence, now issues this memorandum of decision which includes findings of fact and conclusions of law as required by Bankr. R. 7052.

FINDINGS OF FACT

David and Jean Ramaker were chapter 11 debtors-in-possession in a case pending in this court. While operating their farm during the chapter 11, Ramaker contacted Wiederholt Agri-Service (WIEDERHOLT) at its business location in Wisconsin for the purpose of obtaining credit to buy fertilizer and chemicals for the 1987 corn crop. All of Ramaker's contact with Wiederholt was through its owner, Kenneth Wiederholt, Sr. Wiederholt granted Ramaker's request and sold fertilizer and chemicals to them on credit. At the time of the credit arrangement, Ramaker executed a financing statement which identified the following collateral: "All growing crops & products of such on property owned by debtors in Section 35 & 36 Jamestown Twp.--Grant County, Wisc. purchase money." David Ramaker was listed as the debtor; Wiederholt Agri-Services was listed as the secured party. The financing statement was filed with the Grant County, Wisconsin Register of Deeds on April 24, 1987. Presumably Ramaker also signed a

security agreement describing the same collateral. This security agreement was not offered into evidence.

The granting of such a security interest during the pendency of the chapter 11 was never approved by the court. Ramaker testified that Wiederholt was to obtain approval of the line of secured credit. Ramaker paid Wiederholt for the fertilizer and chemicals he received. The 1987 crop was used to feed Ramakers' livestock. For the 1988 crop year, Ramakers made arrangements to obtain fertilizer and chemicals from another vendor. They planted their 1988 corn crop on the land as was described in the financing statement.

Ramaker's next contact with Wiederholt was in the fall of 1988 when Ramaker arranged to store 4,995 bushels of his 1988 corn crop at Wiederholt's storage facilities. Ramaker became obligated to Wiederholt for trucking, drying and storing this 1988 corn. The amount owed was \$3,102.97. Ramaker arranged to "seal" this corn with Commodity Credit Corporation (CCC). As part of the loan transaction with CCC, it was necessary for Ramaker to obtain a lien waiver from Wiederholt. Wiederholt gave such a waiver. Approximately a week later, Ramaker paid Wiederholt by check for the trucking, drying and storage fees. There were insufficient funds in Ramakers' account to pay the check because IRS froze the debtors' bank account. Wiederholt was never paid for the drying, trucking and storage fees. Ramakers converted their chapter 11 case to chapter 7 in January, 1989 and received a discharge on May 11, 1989.

In April or May, 1989 Ramaker desired to redeem from CCC the 1988 corn stored at Wiederholt. He could redeem the 4,995 bushels for \$1.67 per bushel. He needed the corn or its sale proceeds to enable him to feed his livestock.

Ramaker hoped to borrow money from State National Bank of Platteville, Wisconsin (now known as Clare Bank) to pay the redemption price. The bank advised Ramaker that he should talk to Kenneth Wiederholt and obtain Wiederholt's agreement that it would not take more than \$3,102.00 from the value of the redeemed corn. Ramaker contacted Kenneth Wiederholt but could not obtain such an agreement. When Kenneth Wiederholt told Ramaker he would not sign such agreement, he told Ramaker to tell the bank to "trust me on this." Because Wiederholt would not sign such an agreement, Ramaker did not redeem.

In order to feed his livestock, Ramaker purchased 4,138.23 bushels of corn from another vendor between April 21, 1989 and October 12, 1989. The cost of the corn was \$11,532.42. Because Ramaker was forced to purchase the corn at an average price of \$2.78 per bushel, it cost him \$4,621.58 more than the redemption price to purchase on the open market. The sealed corn exceeded Ramakers' feed needs by 856.77 bushels. Ramaker could have sold this excess at a \$1.20 per bushel profit. He estimates he lost a little more than \$1,000.00 in profit on the excess.

Ramakers decided to seal their 1989 corn crop. However, when Ramaker went to ASCS for the Commodity loan, he was informed that because of the existence of the Wiederholt financing state-

ment, it would be necessary for Ramaker to obtain a lien waiver from Wiederholt or CCC would have to place Wiederholt's name on the loan proceeds check. At that time, an oral request was made on behalf of Ramaker that Wiederholt release its financing statement. Wiederholt refused.

Because Ramaker believed he would have a difficult time cashing a loan check with Wiederholt's name on it, and in the absence of an agreement by Wiederholt to specify the amount he would take for payment of the storage bill, Ramaker decided not to seal the crop. At that time, Ramakers had on hand 200 head of cattle and approximately 600 to 700 head of hogs. Ramaker intended to use the loan proceeds from the 1989 corn crop to "finish" the cattle. According to bank officer Paras Reddy, the proceeds of the Commodity Credit loan could have been used to pay down Ramakers' line of credit with the Platteville Bank. Ramakers could then have borrowed money to purchase feed for the cattle. In the absence of a pay down, the bank was not in a position to lend Ramakers more money.

As a result of the decision not to seal the crop, Ramaker determined to sell 80 head of cattle in May and June of 1990. The sale would be earlier than Ramaker had planned. The 80 head would be sold as feeder cattle rather than finished cattle. Ramaker calculates his loss of profit on these cattle as \$12,000.00. Because of the earlier-than-planned sale, there was a 300-pound weight difference per animal and a loss of \$200.00 per head in the sale price. The estimated cost per head to

obtain the greater market weight was \$50.00. The estimated loss of \$150.00 for 80 head yielded the \$12,000.00 estimated loss.

On March 22, 1990, Ramakers' attorney wrote to Wiederholt demanding that the financing statement be released. The letter advised Wiederholt that, in the attorney's opinion, the financing statement was void for lack of court approval, that nothing remained of the 1987 crop, and that any debt of Ramakers to Wiederholt had been discharged in the chapter 7 case.

Taking the position that the financing statement was no longer valid, Ramakers' attorney requested Wiederholt to file the termination notice immediately. This was not done, as the financing statement was still on file with the Register of Deeds at the time of trial.

Because of the court's entry of default in this case, ASCS permitted Ramakers to seal the 1990 crop without placing Wiederholt's name on the check or requiring a lien waiver.

In prosecuting this adversary proceeding, Ramakers' attorney expended 15.15 hours from March 22, 1990 through October 23, 1990. It was necessary for the attorney to travel from Dubuque to Cedar Rapids for trial. His round trip would take approximately three hours. The damages hearing took approximately one hour and 15 minutes.

DISCUSSION

Ramakers seek to recover damages for several reasons. First, they contend that because they could not obtain a release of 1988

corn, it was necessary for them to purchase corn throughout 1989 on the open market. The purchase of the 4,138.23 needed bushels cost them \$4,621.58 more than the cost of redemption of a like number of sealed bushels. Second, Ramakers allege that had they been able to redeem the 4,995 bushels stored at Wiederholt's, some 857 bushels could have been sold at a profit of \$1.20 per bushel. This lost profit would have amounted to \$1,028.12. Third, Ramakers contend that because of Wiederholt's failure to release its lien, they could not sell their 1989 corn crop. This resulted in a financial inability to obtain sufficient supplies to feed Ramakers' cattle herd to the projected market weight. Eighty head were sold early at a loss of \$150.00 per head or \$12,000.00. Fourth, Ramakers seek recovery of reasonable attorney's fees in prosecuting this adversary proceeding. Fifth, Ramakers seek punitive damages.

Defendant failed to defend and is in default. As a result, the factual allegations of the complaint relating to liability are considered to be true. Dundee Cement Co. v. Howard Pipe & Concrete Products, Inc., 722 F.2d 1319, 1323 (1983).

The court must still determine whether these unchallenged facts constitute a cause of action. Kelley v. Carr, 567 F.Supp. 831, 840 (W.D. Mich. 1983). It is also necessary for the court to consider the amount of damages. Bankr. R. 7055 as it incorporates Fed.R.Civ.P. 55(b)(2). Kelley v. Carr at 841.

The financing statement was filed in Wisconsin. Therefore, Wisconsin law is controlling as to plaintiffs' damages. Wis. Stat § 409.404(1)(a) requires that:

whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number.

Further, Wis. Stat. § 409.404(1)(d) states that

[i]f the affected secured party fails to file a termination statement as required by this subsection, or to send such a termination statement within ten days after receipt of the debtor's written demand the secured party is liable to the debtor for \$25, and in addition for any loss caused to the debtor by such failure.

The first written demand from Ramakers to Wiederholt was the March 22, 1990 letter written to Wiederholt by Ramakers' attorney. Ramakers, as debtor-in-possession, never obtained approval for the 1987 line of secured credit with Wiederholt. Wiederholt's security interest in debtors' growing crops was without effect. 11 U.S.C. § 364(c). Thus, upon demand by Ramakers, Wiederholt should have provided the requested termination statement.¹

Pursuant to the previously cited Wisconsin statute, damages cannot accrue until a written demand has been sent to the creditor. Therefore, the claim for damages arising out of the pur-

¹ The court need not determine whether other reasons defeated the effectiveness of Wiederholt's security interest and therefore required termination.

chase of feed in 1989 cannot be awarded, as any damages were sustained before any written demand had been provided to Wiederholt. For the same reason, Ramakers will not be allowed damages for their loss of profit on the 800-plus bushels of unredeemed corn which might have been sold by Ramakers.

Nor can Ramakers' claim to lost cattle profits be sustained. Fed.R.Civ.P. 54(c) as incorporated by Bankr. R. 7054 provides that "[a] judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment." See also, Marina B Creation S.A. v. de Maurier, 685 F.Supp. 910, 912 (S.D. N.Y. 1988).

Ramakers' allegation of actual damages was contained in paragraph 12 of the Complaint: "The Defendant's willful failure to terminate the claim of security interest is the proximate cause of damage to Plaintiffs in that third parties refused to transaction (sic) business with Plaintiffs because of the outstanding claim to security interest which continues to be asserted by Defendant." Ramakers did not seal the 1989 corn because of the pending security interest of Wiederholt. As a result, Ramakers claim they could not afford to feed all of their cattle to market weight. Instead they sold 80 head, losing \$150.00 per head in profit. This may be true, but the court has a difficult time in seeing how such damages are contained within plaintiffs' paragraph 12.

Furthermore, there is no proof that CCC refused to seal the corn or to deal with Ramakers; there is proof only that Commodity

Credit Corporation would have put Wiederholt's name on the check. This was not a refusal by CCC to deal with plaintiffs. While there may have been other third parties who refused to do business with Ramakers because of the pending financing statement, no evidence of it was shown, and no damages from it were proven.

Nor is the Bank's failure to lend money proof of damage. The corn was not sealed, but something was done with it. Despite the filed financing statement, the corn did not disappear into thin air. There was no proof of what happened to the 1989 crop. Absent such proof, the court finds it difficult to connect the decision not to seal the corn with the lost cattle profits. Be that as it may, the court concludes that the loss in cattle profits were not damages reasonably described in plaintiffs' complaint. The court will not permit the default judgment to extend beyond matters raised in the pleadings. Secondly, the proof was insufficient to support the claim of lost profits.

Ramakers also request punitive damages. Such damages should be awarded. Wiederholt obtained a security interest in Ramakers' crop in 1987 to ensure payment by Ramakers for purchases of fertilizer and chemicals. Wiederholt was paid for these items.

There is no evidence that Wiederholt's security interest was intended to secure the Ramakers' payment of the trucking, drying and storage of the 1988 corn. Ramakers attempted to pay these charges, but their check was dishonored because of the IRS levy. When Ramakers' attorney requested the termination of the financing statement in March of 1990, Wiederholt should have complied.

Wiederholt failed to comply apparently because of Kenneth Wiederholt's being miffed about the dishonored check. The refusal to comply was willful. There has been no showing it was justified. Punitive damages will be awarded in the sum of \$300.00.

Ramakers also seek to recover attorney's fees. They are entitled to them. Wiederholt should have swallowed its resentment and provided the requested termination statement. Ramakers have had to incur substantial legal fees in order to have the financing statement terminated. Even now it is on file. The court has examined exhibit 6 and finds that the time devoted to the case by Ramakers' attorney is reasonable, and in addition to the 15.15 hours expended through October 23, 1990, the court will allow legal fees for one and one-quarter hours for trial and three hours for travel. Legal work, totaling 16.50 hours will be compensated at the rate of \$75.00 per hour. Travel time in the amount of three hours will be compensated at the rate of \$37.50 per hour. Total legal fees allowed will be \$1,350.00.

Statutory damages for failing to file the termination statement are \$25.00. Although not requested by Ramakers, they will be allowed as provided by Wis. Stat. § 409.404(1)(d). Wiederholt had constructive notice of the statutory damages.

Finally, Ramakers request a court order directing the defendant to file the termination statement. Such an order will enter.

ORDER

Judgment shall enter that plaintiffs David J. Ramaker and Jean A. Ramaker shall recover from defendant Wiederholt Agri-Service the sum of \$1,375.00. Defendant shall pay punitive damages to Ramakers in the sum of \$300.00.


IT IS FURTHER ORDERED that defendant Wiederholt Agri-Service shall within 14 days of the service of judgment provide the debtors with a termination statement for each filing officer with whom a financing statement was filed as provided in Wis. Stat. 409.404(1)(a).

IT IS FURTHER ORDERED that the clerk of court shall tax costs to the defendant.

SO ORDERED ON THIS 7th DAY OF NOVEMBER, 1990.



William L. Edmonds, Bankruptcy Judge

cc: Wiederholt Agri-Services
Victor Sprengelmeyer
U. S. Trustee
on 11/8/90, 

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

OCT 24 1991

BARBARA A. EVERLY, CLERK

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)	CHAPTER 7
)	
DAVID J. RAMAKER and)	BANKRUPTCY NO. R-85-01839-D
JEAN A. RAMAKER, Debtors.)	
-----)		
)	
DAVID J. RAMAKER and)	ADVERSARY NO. X-90-0142-D
JEAN A. RAMAKER,)	
)	
Plaintiffs,)	
vs.)	
)	
)	
WIEDERHOLT AGRI-SERVICE,)	
A Wisconsin Corporation,)	
Defendant.)	

SATISFACTION OF JUDGMENT

COME NOW David J. Ramaker and Jean A. Ramaker and hereby enter satisfaction of the Judgment rendered in this matter on the 7th day of November, 1990, which Judgment was filed with the above captioned Court on November 8, 1990. This Judgment is satisfied in full, having been paid in full.

Respectfully submitted,

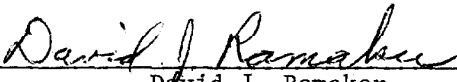
DAVID J. RAMAKER and
JEAN A. RAMAKER, Debtors-Plaintiffs,

David J. Ramaker
David J. Ramaker

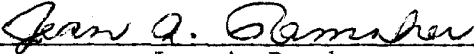
Jean A. Ramaker
Jean A. Ramaker

STATE OF IOWA)
) SS:
COUNTY OF DUBUQUE)

We, DAVID J. RAMAKER and JEAN A. RAMAKER, Debtors-Plaintiffs in the foregoing matter, do hereby state that we are the Debtors-Plaintiffs in the foregoing matter; that we have read the foregoing Satisfaction of Judgment and know the contents thereof and understand the contents thereof; that we have executed the foregoing Satisfaction of Judgment freely and voluntarily and acknowledge the Judgment is satisfied.

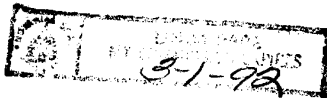


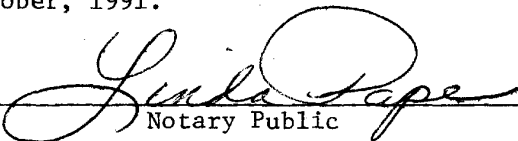
David J. Ramaker



Jean A. Ramaker

Subscribed and sworn to before me by David J. Ramaker and Jean A. Ramaker on this 18th day of October, 1991.





Notary Public